

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
37.82.435 pertaining to Medicaid real)	ON PROPOSED AMENDMENT
property liens)	

TO: All Interested Persons

1. On November 14, 2007, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.82.435 MEDICAID REAL PROPERTY LIEN, NOTICE AND RIGHT TO HEARING (1) At least ~~90~~ 30 days prior to filing a lien under 53-6-171, MCA upon real property of a Medicaid applicant or recipient, the department must provide the applicant or recipient notice of its determination that applicant or recipient is permanently institutionalized and that none of the exceptions provided by 53-6-171, MCA or federal law apply. The notice must inform the applicant or recipient of the exceptions that would prevent imposition of a lien and of the right to a fair hearing as provided in (2).

(2) The applicant or recipient upon whose property the department proposes to impose a lien under 53-6-171, MCA is entitled to a fair hearing according to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.318, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337. The applicant or recipient must request the hearing within ~~90~~ 30 days of receipt of the notice required under (1).

(a) and (3) remain the same.

AUTH: 2-4-201, 53-6-113, 53-6-189, MCA

IMP: 2-4-201, 53-2-201, 53-6-171, 53-6-172, MCA

4. The Department of Public Health and Human Services (department) is

proposing amendments to ARM 37.82.435 that would reduce the time between a determination that a Medicaid applicant or recipient is permanently institutionalized and imposition of a property lien. Currently, that time and the time allowed for a hearing request is 90 days. The proposed amendments would make it 30 days. Montana law (53-6-171, MCA) and federal regulation (42 CFR 433.36) require the department, following notice and opportunity for hearing, to impose a lien upon the real property, including the home of an institutionalized recipient of recoverable medical assistance. The aim of the law and regulation is to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien when certain conditions are met. Under 53-6-172, MCA the department shall provide the recipient 30 days written notice of its determination under 53-6-171(1)(c), MCA, of its intent to impose a lien, and, of the opportunity for a hearing under to the department's hearing procedures. This rule change would bring the department into compliance with Montana law.

The first proposed amendment is in the first sentence of ARM 37.82.435(1). It would change the 90 day provision to 30 days to be in compliance with 53-6-172, MCA. The second amendment is in ARM 37.82.435(2). It also would change the 90 day provision to 30 days.

53-6-172, MCA states that the department shall provide the recipient 30 days written notice of its determination under 53-6-171(1)(c), MCA, of its intent to impose a lien, and of the opportunity for hearing pursuant to the department's hearing procedures. This proposed rule change would bring the department into compliance with the Montana law specifying a 30 day notice period and opportunity to request a hearing.

No other alternatives were considered because the law specifically provides for the 30 day period.

The proposed rule will not increase or decrease a monetary amount that a person will pay or will receive, such as a fee, cost, or benefit.

The proposed rule will not affect or make any changes in state or federal fund expenditures for the fiscal year or the biennium.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State October 15, 2007.